IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 343 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVUSINH LALSINH RATHOD - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NV GANDHI for Applicant(s) : 1,
MR. H.M.PRACHHAK for Respondent(s) : 1,
MR SK PATEL for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 30/08/2005

ORAL JUDGMENT

1. **RULE**. Mr. H.M.Prachhak, learned APP appears and waives service of notice of Rule on behalf of respondent no.1-State of Gujarat, whereas Mr. S.K.Patel, learned advocate appears and waives service of notice of Rule

on behalf of respondent no.2/original complainant.

2. By filing this Petition under Section 397 of the Code of Criminal Procedure ('the Code' for short), the petitioner/original accused seeks to challenge the judgement and order dated 21.4.2005 rendered in Criminal Appeal No. 13 of 2004 by the learned Sessions Judge, Sabarkantha at Himmatnagar, by which the Appeal filed by the petitioner came to be dismissed and thereby judgement and order dated 31.8.2004 rendered in Criminal Misc. Case No. 433 of 2001 by the learned JMFC, Sabarkantha at Himmatnagar, convicting and sentencing the petitioner to undergo simple imprisonment for a period of 2 years and to pay fine of Rs.2000/-, for commission of the alleged offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short), came to be affirmed.

3. At the time of admission hearing, this Court vide order dated 12.5.2005 issued notice and made it returnable on 24.6.2005 and the petitioner was directed to be released on bail on furnishing personal bond of Rs.5000/- with one surety of like amount to the satisfaction of the lower Court subject to deposit of Rs.15,000/- before this Court within 3 weeks from the date of the said order. In compliance of the aforesaid order the petitioner deposited Rs.15,000/- with the registry of this Court on 25.5.2005.

4. Today when the matter is called out, Mr. Nehal Gandhi, learned advocate of the petitioner/original accused and Mr. S.K.Patel, learned advocate for respondent no.2-original complainant jointly state that both the parties have amicably settled the dispute and the

petitioner has already paid Rs.70,000/- in cash to the complainant, in full and final settlement of the dispute between them and the remaining amount of Rs.15000/- which is deposited by the petitioner in this Court shall be paid to respondent no.2-original complainant. Both of them have signed the consent terms, which is notarized before Notary and Affidavit of the complainant in support of the consent terms is also produced. They therefore urged that in view of Section 147 of the Act, the offence is compoundable and therefore compromise may be recorded and the order which is impugned, i.e. convicting and sentencing the petitioner may be quashed and set aside.

5. This Court has considered the submissions advanced by Mr. Nehal Gandhi, learned advocate of the petitioner, Mr. H.M.Prachhak, learned APP for respondent no.1 State of Gujarat and Mr. S.K.Patel, learned advocate for respondent no.2/original complainant.

6. The respondent/original complainant has filed Criminal Case No. 433 of 2001 against the petitioner u/s 138 of the Act before the learned JMFC, Sabarkantha at Himmatnagar since the cheque issued by the petitionerin favour of respondent no.2 for Rs.85,000/- was not honoured on presentation by respondent no.2. At the end of the trial, the learned trial Judge found that the offence is proved, therefore he recorded an order of conviction and the petitioner was sentenced to suffer simple imprisonment for a period of 2 years and to pay fine of Rs.2000/-.

7. Aggrieved thereby the petitioner preferred appeal being Criminal Appeal No. 13 of 2004 before the Sessions Court, Sabarkantha at Himmatnagar which came to be

dismissed by confirming the order of conviction and sentence imposed upon the petitioner, which has given rise to the present petition at the instance of the original accused.

8. At the time of admission hearing this Court has issued notice and the petitioner was released on bail and the petitioner was further directed to deposit Rs.15,000/- with the registry of this Court.

9. Today, the learned advocates appearing for both the parties have presented the consent terms which is signed by the petitioner as well as respondent no.2-original complainant. As per the said consent terms, both of them have settled the matter amicably outside the Court, and as per the settlement, the petitioner has already paid Rs.70,000/- in cash and respondent no.2-original complainant has accepted the same, and they have further agreed that respondent no.2 may be permitted to withdraw Rs.15,000/- which has been deposited by the petitioner with the registry of this Court. They, therefore, requested that the order of conviction and sentence may be quashed and set aside in exercise of powers conferred u/s 147 of the Act.

10. On perusal of Section 147 of the Act, the offence under the Act is made compoundable at the instance of the original complainant.

11. Since the matter has been settled amicably between the parties, the order which is impugned under this petition, recorded by the learned trial Judge convicting and sentencing the petitioner, which is affirmed by the learned Sessions Judge, Sabarkantha at Himmatnagar, is deserve to be quashed and set aside by allowing this petition.

12.For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 31.8.2004 recorded in Criminal Case No. 433 of 2001 by the learned JMFC, Sabarkantha at Himmatnagar convicting and sentencing the petitioner as well as order dated 21.4.2005 recorded in Criminal Appeal no. 13 of 2004 by the learned Sessions Judge, Sabarkantha at Himmatnagar, confirming the order of conviction and sentence, are hereby quashed and set aside, the result of which is that the petitioner is acquitted of the offence with which he was charged.

13.The amount of Rs.15000/- deposited by the petitioner with the registry of this Court shall be permitted to be withdrawn by respondent no.2/original complainant. The registry is directed to pay the said amount of Rs.15,000/- to respondent no.2/original complainant upon due verification, by A/c payee cheque.

14.Rule is made absolute accordingly.

(A.M.Kapadia,J)

Jayanti*